

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

SEP 03 2024

KEVIN P. WEIMER, Clerk
By: *[Signature]* Deputy Clerk

RICKY R. FRANKLIN

Plaintiff,

v.

CLASSIC FIREARMS LLC AND
MENS USA LLC D/B/A
MENS USA.COM

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:
:
:
:
:
:
:

Civil Action No:

1:24-CV-3922

INTRODUCTION

1. RICKY R. FRANKLIN, (referred to as “Plaintiff”) bring this action for damages, and any other available legal or equitable remedies, resulting from the illegal actions of CLASSIC FIREARMS LLC and MEN’S USA LLC d/b/a MENSUSA.COM its related entities, subsidiaries and agents in negligently, knowingly, and/or willfully contacting Plaintiffs on Plaintiffs’ cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiffs’ privacy.
2. Both Defendants has violated the TCPA pursuant to 47 U.S.C. § 227(c)(5), whereas Plaintiff has received more than one telephone call within a 12-month

period by or on behalf of the same entity in violation of the regulations prescribed under this subsection.

3. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiffs. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

4. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that technologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub. L. No. 102-243, § 11. Congress found that: banning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12; *see also Martin v. Leading Edge Recovery Solutions, LLC*, No. 11-C-5886, 2012 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

5. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of

privacy, regardless of the type of call....” *Id.* at §§ 12-13. *See also Mims*, 132 S. Ct. at 744.

6. Text messages are “calls” within the context of the TCPA. *See...Satterfield v. Simon & Schuster, Inc.*, 569 F.3d (9th Cir. 2009).

JURISDICTION & VENUE

7. Jurisdiction arises under the TCPA, pursuant to 28 U.S.C. sections 1331 and venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

PARTIES

8. Plaintiff, RICKY R. FRANKLIN, is a natural person who was at all relevant times residing in the city of Stockbridge, county of Henry, state of Georgia.

9. Defendant CLASSIC FIREARMS LLC (hereinafter, “CFA or “Defendant CFA or Defendants”) is a company with a headquarters located in Georgia who’s Registered Agent is Robert E. Webb, Jr, located at 105 Red Fox Run, Macon, GA 31210

10. Defendant MENS USA LLC., D/B/A MENSUSA.COM (hereinafter, “MENS or “Defendant MENS or Defendants”) is a company with a headquarters located in California who’s address is 11517 SANTA MONICA BLVD. LOS ANGELES,

CA 90025 and a Registered Agent of Ashkan Y. Mashhadian, located at 1717 Malcom Ave, Los Angeles, GA 90024

11. Defendants are, and at all times mentioned herein was, a “person,” as defined by 47 U.S.C. § 153 (39).

12. At all times relevant Defendants conducted business in the State of Georgia and, within this judicial district.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991
(TCPA) 47 U.S.C § 227et seq.

13. In 1991, Congress enacted the TCPA in response to a growing number of consumer complaints regarding certain telemarketing practices.

14. The TCPA regulates, inter alia, the use of automated telephone equipment, or “predictive-dialers”, defined as equipment which “has the capacity...(a) to store or produce telephone numbers to be called, using a random or sequential number generator; and (b) to dial such numbers. 47 U.S.C. § 227(a)(1). Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of auto-dialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.

15. In addition to the restrictions on automated telephone equipment, the TCPA instructs the FCC to issue regulations “concerning the need to protect residential telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object.” 47 U.S.C. § 227(c)(1). Accordingly, the FCC issued regulations prohibiting “persons or entities from initiating any call for telemarketing purposes to a residential telephone subscriber unless the person or entity has instituted certain listed procedures for maintaining” a do-not-call list. 47 C.F.R. § 64.1200(d). Relevant here, the regulations require the telemarketer to (1) provide “the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted,” § 64.1200(d)(4); (2) maintain a do-not-call list, § 64.1200(d)(6); and (3) honor a person’s request not to be called.

ALLEGATIONS OF FACT FOR BOTH DEFENDANTS

16. In 2023, Plaintiff received a text message from Defendant CFA with a number showing 478-217-9515 on his cellular telephone number ending in -3733. During this time, Defendant began to use Plaintiff’s cellular telephone for the purpose of sending Plaintiff spam advertisements and/or promotional offers, via text messages, including fourteen (14) other text messages up until the present day. The text messages were impersonal and read:

July 11, 2023: CLASSIC FIREARMS ANNIVERSARY SALE! BIGGEST SALE OF THE YEAR, this FRIDAY & SATURDAY July 14th & 15th See sale flyers on our website, Classicfirearms.store.

(See Attached Exhibit A, Text message Campaign)

17. Plaintiff has receive at least fourteen (14) unsolicited texts from Defendant CFA in violation of 47 U.S.C. § 227 *et seq*

18. Plaintiff started receiving messages from Short Message Code #33222, belonging to the Defendant MEN'S on his personal cellphone ending in 3733. All of the text messages received were similar in nature and not personal and stated:

June 10, 2020: MENSUSA.COM All Colors & Sizes BROWSE OUR MENSWEAR CATALOG CLICK > MENSUSA.COM Suites & Shoes>MENSUSA.COM Casualwear> MENSUSA.COM

(Attached Exhibit B, Text message Campaign)

19. Plaintiff has received at least five (5) unsolicited calls/texts from the Defendant MEN'S in violation of 47 U.S.C. § 227 *et seq*

20. Plaintiff has never been a customer of the Defendants and Defendants has never gained prior express written consent from Plaintiff to send these text messages to his cellphone.

21. The text message sent to Plaintiff's cellular telephone was not sent by a live agent and thus created a one-sided conversation in which Plaintiff could not receive a response to his questions and/or concerns. The text message also was

sent in an automated fashion as a result of computerized campaigns that were pre-programmed in advance to send messages out to large groups of consumers all at once, either sequentially or via algorithmic dialing, i.e. in an automated fashion by a computer.

22. The messages sent to Plaintiff by Defendant using the SMS blasting platform employed a text message as an instrument or medium of expression to deliver an automatic message drafted in advance of being sent, i.e. that of an SMS message, to convey a telemarketing communication to Plaintiff. SMS blasting platforms are man-made humanly contrived programs which allow companies to blast out such messages via non-spontaneous methods, i.e. automated methods similar to that of an assembly line in a factory. Such SMS blasting devices are incapable of spontaneity, as they must be programmed by the operator to automatically send messages out, en masse, pursuant to preprogrammed parameters.

23. Accordingly, Defendant's messages utilized an "artificial voice" as prohibited by 47 U.S.C. § 227(b)(1)(A).

24. Upon information and belief, all of the calls/texts Defendants placed to Plaintiffs cellular phone were placed using an "automatic telephone dialing system" (hereinafter, "auto-dialer"), which has the capacity to store and send bulk messages and to dial such numbers as specified by 47 U.S.C. § 227(a)(1)

25. Upon information and belief, the Defendant's calls to Plaintiffs cellular telephone utilizing an "artificial or prerecorded voice messaging system" violated 47 U.S.C. § 227(b)(1)(A).

26. Upon information and belief, the Defendant's calls to Plaintiffs cellular telephone violated 47 U.S.C. § 227(c)(5).

27. The impersonal and generic nature of the text messages that Defendants sent to Plaintiff demonstrate that Defendants used an ATDS to send the subject text messages.

28. Upon information and belief, Defendants used a combination of hardware and software systems which have the capacity to generate or store random or sequential numbers or to dial sequentially or randomly in an automated fashion without human intervention.

29. Upon information and belief, Defendants used a device to send the subject text messages to Plaintiff that stores numbers and dials them automatically to a stored list of phone numbers as part of scheduled campaigns.

30. This text message constituted a call that was not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

31. According to the Federal Trade Commission, telemarketers and businesses would have to stop solicitation calls within 30 days of a registration of the do-not-call registry. Citing...https://www.fcc.gov/sites/default/files/do-not-call_list.pdf)

32. Plaintiff uses his cellular phone number as his primary residential number for personal, family, and household use. The Plaintiff has never maintained a landline at his residence and uses his cell phone for setting alarms, navigation purposes, sending/receiving emails, timing events, working out sending/receiving text messages. The Plaintiff further has his cell phone for his personnel accounts, and the phone is not primarily used for any business purpose.

33. The Defendants failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

34. Plaintiff suffered a concrete and real invasion of Plaintiff's legally protected privacy rights through Defendant's violation of the TCPA. The continuous repeated calls came with such persistence and frequency as to amount to a course of hounding the Plaintiff. Additionally, these calls drained the cellphone battery resulting in a cost to recharge the phone and using up minutes on a prepaid plan. Defendants failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

**CAUSE OF ACTION COUNT- I FOR DEFENDANT CLASSIC
FIRE ARMS FOR REPEATED VIOLATIONS OF THE
("TCPA"), 47 U.S.C. SECTION 227et seq**

35. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

36. Without prior express written consent, the Defendant CFA texted the Plaintiff at least fourteen (14) by means of automatic texting system to a cellphone or pager in violation of 47 U.S.C. §227(b)(1)(A)(iii).

37. Defendant CFA placed over fourteen (14) phone calls to Plaintiff's "residential number" which is listed on the "Do-Not-Call" registry and did not reveal the entities on whose behalf they were made, did not provide contact information for those entities, that Defendants failed to maintain records of his requests to be placed on the do-not-call list and also failed to honor his do-not-call request.

38. As a result of Defendant CFA violations of 47 U.S.C. § 227et seq., Plaintiff is entitled to an award of a minimum of \$500 to \$1,500.00 in statutory damages for each call-in violation of the statute pursuant to 47 U.S.C. § 227(b)(3).

39. As a result of Defendant CFA violations of 47 U.S.C. §227(c)(5), Plaintiff is entitled to an award of \$1,500.00 in statutory damages for each willful call-in violation of the statute pursuant to 47 U.S.C. § 227(c)(5).

**CAUSE OF ACTION COUNT- I FOR DEFENDANT MEN'S USA LLC
D/B/A MENSUSA.COM FOR REPEATED VIOLATIONS OF THE
("TCPA"), 47 U.S.C. SECTION 227et seq 5)**

40. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

41. Without prior express written consent, the Defendant MENS texted the Plaintiff at least five (5) times by means of automatic texting system to a cellphone or pager in violation of 47 U.S.C. §227(b)(1)(A)(iii).

42. Defendant MENS placed over five (5) phone calls to Plaintiff's "residential number" which is listed on the "Do-Not-Call" registry and did not reveal the entities on whose behalf they were made, did not provide contact information for those entities, that Defendants failed to maintain records of his requests to be placed on the do-not-call list and also failed to honor his do-not-call request.

43. As a result of Defendant MENS violations of 47 U.S.C. § 227et seq., Plaintiff is entitled to an award of a minimum of \$500 to \$1,500.00 in statutory damages for each call-in violation of the statute pursuant to 47 U.S.C. § 227(b)(3).

44. As a result of Defendant MENS violations of 47 U.S.C. §227(c)(5), Plaintiff is entitled to an award of \$1,500.00 in statutory damages for each willful call-in violation of the statute pursuant to 47 U.S.C. § 227(c)(5).

PRAYER FOR RELIEF

a) As a result of the Defendant's violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to statutory damages of \$500 to \$1,500.00 for each and every call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3);

- b) As a result of Defendant's violations of , 47 U.S.C. § 227(c)(5), Plaintiff is entitled to an award of \$1,500.00 in statutory damages for each and every call in violations of State and Federal the "do-not-call" provisions;
- c) Assessing against Defendants, all costs incurred by the Plaintiff; and
- d) Awarding such other relief as justice and equity may require.

Respectfully submitted,



708 Brambling Way
Stockbridge, GA 30281
(678-650-3733)
rrfrank12@hotmail.com

EXHIBIT A

1:43



+1 (478) 217-9515 >

Text Message
Jul 11, 2023 at 12:44 PM

(CLASSIC FIREARMS)
ANNIVERSARY SALE!
BIGGEST SALE OF THE
YEAR, this FRIDAY &
SATURDAY July 14th &
15th.
See SALE FLYERS on our
website,
Classicfirearms.Store

Jul 13, 2023 at 5:57 PM

(CLASSIC FIREARMS) GUN
SHOW! THIS WEEKEND @
Jim Miller Park in Marietta.
LOTS OF GREAT DEALS, so
swing on by and pick one up
THIS WEEKEND! See you
there!

Aug 2, 2023 at 12:30 PM

1:43



+1 (478) 217-9515 >

Aug 2, 2023 at 12:30 PM

(CLASSIC FIREARMS) GUN
SHOW! THIS WEEKEND @
The Clarence Brown Center
in CARTERSVILLE AUGUST
5TH & 6TH. Come see us
for LOW LOW PRICES & A
WIDE SELECTION!

Aug 9, 2023 at 6:02 PM

(CLASSIC FIREARMS) GUN
SHOW! THIS WEEKEND in
FOREST PARK 4462
Jonesboro Rd. Come by for
a GREAT SELECTION OF
FIREARMS AND
UNIMAGINABLE DEALS!
DON'T MISS OUT!

Aug 24, 2023 at 4:01 PM

(CLASSIC FIREARMS) GUN

1:43



+1 (478) 217-9515 >

Aug 24, 2023 at 4:01PM

(CLASSIC FIREARMS) GUN
SHOW THIS WEEKEND
NEAR YOU In Lawrenceville
@ Gwinnett County
Fairgrounds. STOP IN for
BIG DISCOUNTS & TONS
OF NEW & EXCITING
INVENTORY!

Thu, Sep 14 at 6:17PM

(CLASSIC FIREARMS) GUN
SHOW! BIGGEST IN THE
STATE @ THE SOUTH ATL
EXPO CENTER THIS
WEEKEND. COME SEE US
FOR ALL YOUR FIREARM
NEEDS! Guns, Ammo &
Accessories!

1:43



+1 (478) 217-9515 >

Thu, Oct 5 at 4:23PM

(CLASSIC FIREARMS) GUN
SHOW IN EMERSON THIS
WEEKEND, LARGEST
SHOW NORTH OF ATL! @
Lakepoint Sports. Come by
to browse our wide
selection & competitive
pricing!!

Thu, Oct 12 at 5:38 PM

(CLASSIC FIREARMS) GUN
SHOW @ Marietta
Machinists Union Hall THIS
WEEKEND! WE WILL BE
THERE with lots of exciting
NEW INVENTORY &
SPECIAL PRICING! COME
SEE US!

1:43



+1 (478) 217-9515 >

Thu, Oct 19 at 7:01 PM

(CLASSIC FIREARMS) GUN
SHOW! THIS WEEKEND IN
FOREST PARK AT 4462
JONESBORO RD! LOTS OF
INVENTORY AND DEALS
BEING MADE THIS
WEEKEND. COME SWING
BY TO STOCK UP!

Thu, Oct 26 at 5:27 PM

(CLASSIC FIREARMS) GUN
SHOW REMINDER! THIS
WEEKEND @ GWINNETT
COUNTY FAIRGROUNDS.
WE WILL BE THERE! LOOK
FOR THE SIGN & A BIG
SELECTION WITH
COMPETITIVE PRICES!

1:43



+1 (478) 217-9515 >

Thu, Nov 16 at 5:40 PM

(CLASSIC FIREARMS) GUN
SHOW REMINDER!

Cartersville, Ga @ THE
CLARENCE BROWN
CENTER. LOTS OF NEW
INVENTORY ON SALE!
DON'T FORGET TO SWING
BY! LOOK FOR THE SIGN!

(CLASSIC FIREARMS) GUN
SHOW in CONYERS at the
HORSE PARK! 1996
Centennial Olympic Pkwy
NE.

COME SEE US FRONT AND
CENTER! EVERYTHING
WILL BE ON SALE!

Tue, Nov 21 at 12:44 PM

1:44



+1 (478) 217-9515 >

Tue, Nov 21 at 12:44 PM

(CLASSIC FIREARMS)
BLACK FRIDAY SALE
REMINDER! Don't forget to
see our sale flyers at
www.Classicfirearms.Store
Opening @ 9am. Be there
early for DOOR BUSTERS!

Wed, Nov 22 at 5:03 PM

(CLASSIC FIREARMS) GUN
SHOW THIS WEEKEND,
SEE OUR BLACK FRIDAY
DEALS AT OUR TABLE AT
GWINNETT COUNTY
FAIRGROUNDS! Big Show
you won't want to miss, see
you there

EXHIBIT B

2:11



33222 >

Oct 17, 2020 at 12:05 PM

FALL SALE All Styles
Menswear

CLICK These Links->
MENSUSA.COM

Overcoats->
MENSUSA.COM
Pants, Shoes, Hats, Shirts &
Suits
CLICK-> MENSUSA.COM

Text STOP to END

Dec 25, 2020 at 4:11PM

MENSUSA.COM Christmas
Sale! Up to 50% OFF All
Menswear! Orders Ship 2nd
Day Air For Delivery Before
New Years!

Menswear Click >

2:11



33222 >

Mar 18, 2021 at 12:30 PM

**Stimulus Check Menswear
Sale 30% Off!**

**CLICK Link->
MENSUSA.COM**

**Suits, Pants, Shoes, Hats,
Shirts, Coats, Casual, Boots,
Shoes -> MENSUSA.COM**

Text STOP to end

Jul 2, 2021 at 3:31 PM

**4th Of July Menswear Sale
30% Off!**

**Click Link ->
MENSUSA.COM**

**Suits, Pants, Shoes, Hats,
Shirts, Coats, Linen, Boots,
Casual -> MENSUSA.COM**

2:11



33222 >

30% OFF!

Click Link ->
[MENSUSA.COM](https://www.mensusa.com)

Suits, Pants, Shoes, Hats,
Shirts, Coats, Linen, Boots,
Casual -> [MENSUSA.COM](https://www.mensusa.com)

Text STOP to end

May 4, 2023 at 3:16 PM

Alberto Nardoni. 2023
Summer Mens Clothing
Collection! Shop now for
suits, pants, shirts, coats, &
much more. Click
[MENSUSA.COM](https://www.mensusa.com).

Text STOP to end